IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 4657 of 2001 (S/S)

Harendra Singh Rawat
S/o Durga Singh Rawat
R/o Village Tejam Post Tejam
Tehsil &Thana Munsyari Pitthoragarh,
District Pitthoragarh **.....Petitioner**

Versus

1. Union of India throughs Ministry of Defence.
2. Senior Records Officer, Singal Abhilekh Karyala, Singal Record Jabalpur.
3. Army Head Quarter, Adjutant General, Branch/ PS-4 Fourth Floor, A Wing Sena Bhawan BHQ, New Delhi

.....Respondents

Hon'ble M.M.Ghildiyal, J.

Heard Sri Sharad Sharma, learned counsel for the petitioner and Smt. Anjali Bhargav learned Standing Counsel for Union of India of behalf of the respondents.

By means of this writ petition, the petitioner has prayed for the following relief:-

1. Issue writ, order or direction in the nature of mandamus commanding the respondents to pay the disability pension to the petitioner.
2. Issue writ, order or direction in the nature of mandamus commanding the respondents to pay the interest on the disability thus illegally withheld by the respondents.
3. Award the cost of the petition to the petitioner.

The stand of the petitioner is that he was appointed as Signal Man in the Defence Forces and was posted in U.P. Tibet Border. In the meantime, he developed Exima and admitted in hospital. On 05.03.1967, he was discharged on the ground of disability. Disability pension was paid to the petitioner w.e.f.

06.03.1967 to 05.03.1969. When the disability pension to the petitioner was stopped, the petitioner filed a representation. Feeling aggrieved with the inaction of respondents by not taking action on the representation of the petitioner and also for stopping the disability pension, the petitioner has preferred this writ petition.

Counter affidavit has been filed by the respondents, wherein the respondents have stated that the petitioner was enrolled in Garhwal Rifles Regiment on 25.12.1994 and discharged on medical ground being low medical category lower than “AYE”, i.e., “EEE” with effect from 21st August, 1995 under Army Rules 13 (3) (IV) after having been served 7 months and 27 days with the said Regiment.

After discharge of the petitioner, the case for grant of disability pension was submitted to the CDA Pension, Allahabad, which was rejected by the CDA Pension with the remark, first, that the disease is not attributable to military service and the second is that it does not fulfil the following conditions, namely, it existed before and has remained aggravated thereby and third is that it is attributable to/ aggravated by service but assessed at less that 20% and the rejection order was communicated to the petitioner on 22.07.1996.

Against the rejection order, the petitioner preferred appeal, that too was rejected by the Ministry of Defence, New Delhi vide order dated 19th August, 1998. The appeal was rejected by a reasoned order on the second ground. It is not disputed that the petitioner’s disability was assessed less than 20% apart from the fact that the disease from which the petitioner was suffering is not attributable to military service.

Petitioner does not fulfil the requirement, which is necessary for getting the disability pension.

Writ petition lacks merit and as such is dismissed. No order as to costs.

(M.M. Ghildiyal, J.)

05.04.2007
VKS